

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**EMILIO RANDALL  
and STELLA RANDALL,**

**Plaintiffs,**

**vs.**

**Cause No.: 16-CV-00085**

**CITY OF ESPANOLA,  
SOLOMON ROMERO,  
GREG ESPARZA,  
RICHARD TRUJILLO,  
DUSTIN CHAVEZ,  
and ERIC GARCIA,**

**Defendants.**

**NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. § 1441(b) and 1446(a) and (b), Defendant Solomon Romero, by and through his undersigned counsel Brennan & Sullivan, P.A. (James P. Sullivan), gives Notice of Removal to this Court of the civil action filed in the First Judicial District Court for the State of New Mexico, County of Rio Arriba, Cause No. D-117-CV-2015-00241, filed by Emilio Randall and Stella Randall (Plaintiffs), and as grounds therefore states:

1. On June 30, 2015, Plaintiffs filed a Complaint for Damages under the New Mexico Tort Claims Act (“Complaint”) with the First Judicial District Court. A copy of the Complaint is attached hereto as **Exhibit A**.

2. Defendant City of Espanola was served with the Complaint on July 16, 2015. Defendant Greg Esparza was served with the Complaint on July 16, 2015. Defendant Eric Garcia was served the Complaint on July 16, 2015. Defendant Richard Trujillo was served the Complaint on July 16, 2015. Defendant Solomon Romero was served the Complaint on July 24, 2015. Defendant Dustin Chavez was served the Complaint on July 16, 2015. See Returns of Service filed on July 31, 2015, attached hereto as **Exhibits B, C, D, E, and F**.

3. On August 17, 2015, Defendants City of Espanola, Greg Esparza, Richard Trujillo, Dustin Chavez and Eric Garcia filed an Answer to the Complaint. See **Exhibit H**.

4. On August 24, 2015, an Entry of Appearance, Answer to Complaint and Jury Demand was filed on behalf of Defendant Solomon Romero. See **Exhibits I, J and K**.

5. On September 14, 2015, a Certificate of Service was filed for Plaintiff Emilio Randall's First Sets of Discovery to Defendant Solomon Romero and, an additional Certificate of Service was also filed for Plaintiff's Emilio Randall's First Sets of Discovery to Defendants City of Espanola, Dustin Chavez, Eric Garcia, Greg Esparza, and Richard Trujillo. See **Exhibits L and M**.

6. On November 20, 2015, Defendants City of Espanola, Greg Esparza, Richard Trujillo, Dustin Chavez and Eric Garcia filed a First Amended Answer to Complaint. See attached **Exhibit N**.

7. On November 25, 2015, Defendant Solomon Romero filed a Certificate of Service for his Answers and Responses to Plaintiff's First Set of Discovery. See attached **Exhibit O**.

8. On December 16, 2015, Defendants City of Espanola, Greg Esparza, Richard Trujillo, Dustin Chavez and Eric Garcia filed a Certificate of Service for their Answers and Responses to Plaintiff Emilio Randall's First Set of Discovery. See **Exhibit P**.

9. On December 17, 2015, a Stipulated Order Extending Time to Move to Compel (regarding Defendant Solomon Romero) was filed by the Court. See **Exhibit Q**.

10. On January 6, 2016, a Stipulated Order Extending Time to Move to Compel (regarding Defendant City of Espanola) was filed by the Court. See **Exhibit R**.

11. On January 12, 2016, a Notice to Take Deposition of Clairene Poshard was filed. See **Exhibit S**.

12. On January 14, 2016, a Return for Subpoena was filed regarding the Notice to Take the Deposition of Clairene Poshard. See **Exhibit T**.

13. On January 28, 2016, Plaintiffs filed a First Amended Complaint for Damages Under the New Mexico Tort Claims Act and 42 U.S.C § 1983. See **Exhibit U**.<sup>1</sup>

14. On February 3, 2016, Defendants City of Espanola, Greg Esparza, Richard Trujillo, Dustin Chavez and Eric Garcia filed an Answer to First Amended Complaint for Damages under the New Mexico Tort Claims Act and 42 U.S.C. § 1983. See **Exhibit V**.

15. This Notice of Removal is timely as it is filed within 30 days of the filing of the First Amended Complaint, which for the first time raises federal issues.

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<sup>1</sup> Apparently, from a review of the docket in the First Judicial District Court, the First Amended Complaint was filed without leave of Court. There was no Motion to file the First Amended Complaint nor is there any record of an Order allowing for the First Amended Complaint. Nevertheless, since Defendants City of Espanola, Greg Esparza, Richard Trujillo, Dustin Chavez and Eric Garcia filed an Answer to the First Amended Complaint and, anticipating that it would be ultimately filed anyway despite its arguable procedural flaw, Defendant Solomon Romero petitions to Remove at this time to save the Court time and the parties expense in litigating these arguable procedural irregularities.

16. All Defendants consent to the removal of this action.

17. Pursuant to 28 U.S.C. § 1446(d), copies of the Notice of Removal will be promptly given to all adverse parties and a copy of the Notice of Removal will be filed with the Clerk of the First Judicial District Court, County of Rio Arriba, State of New Mexico.

18. The claims stated against Defendants that are subject to the original jurisdiction of this Court pursuant to 28 U.S.C. 1331 and 1343(a)(3) and (4) are as follows:

- a. Third Cause of Action in Plaintiffs' First Amended Complaint, alleging First, Fourth and Fourteenth Amendment rights violations. See **Exhibit U**, Third Cause of Action, p, 16-17.
- b. Fourth Cause of Action in Plaintiffs' First Amended Complaint, alleging Supervisory Liability pursuant to 42 U.S.C. § 1983. See **Exhibit U**, Fourth Cause of Action, p, 17.

19. Federal questions thus appear on the face of Plaintiffs' First Amended Complaint. The Court also has supplemental jurisdiction over Plaintiffs' state law claims in the First and Second Causes of Action in Plaintiffs' First Amended Complaint pursuant to 28 U.S.C. § 1367, as these claims are so related to the federal question claims which this Court has original jurisdiction over that they form part of the same case or controversy under Article III of the U.S. Constitution. See Exhibit U, First and Second Causes of Action, pp. 14-16.

20. Pursuant to Rule 81.1(a) of the Local Rules of the United States District Court for the District of New Mexico, Defendants will file a Notice of Filing of State Court Record and copies of the pleadings filed in the First Judicial District for the State of New Mexico, County of

Rio Arriba, Cause No. D-117-CV-2015-00241, within twenty-eight (28) days of filing this Notice of Removal. A Civil Cover Sheet is attached as **Exhibit W**.

Respectfully submitted,

BRENNAN & SULLIVAN, P.A.

By: /s/ James P. Sullivan  
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*Attorneys for Defendant Solomon Romero*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 4<sup>th</sup> day of February, 2016, I filed the foregoing electronically through the CM/ECF system, and served a true and accurate copy of the filed Notice of Removal via email to the following:

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And Eric Garcia,*

By: /s/ James P. Sullivan  
James P. Sullivan